SEP 12 1989

No. 88-1677

In the Supreme Court
of the United States

OCTOBER TERM, 1988

RONNIE OSCAR KITCHENS, et al.,
Petitioners,

v.

STATE OF OREGON ex rel.
ADULT AND FAMILY SERVICES DIVISION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF OREGON

PETITIONERS' SUPPLEMENTAL BRIEF

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I. INTRODUCTION

New federal regulations, establishing parent location and paternity establishment timeframes, which become effective October 1, 1990, were enacted August 4, 1989 by the Department of Health and Human Services, pursuant to the Family Support Act of 1988. Pub. L. No. 100-485, 102 Stat. 2346 (1988); Final Rule, 54 Federal Register 32284 (August 4, 1989).

These new regulations emphasize the national importance of putative fathers' constitutional Title IV-A notice claim (Petition 33-54) as well as their constitutional claim to assert meritorious defenses where Title IV-D proceedings have been unduly delayed. (Petition 54-64). During these prolonged time spans, changes can occur in the circumstances of putative fathers, as well as the children, making

establishment of paternity inconsistent with the childrens' best interests.

The parent location timeframe requires states to diligently proceed to locate putative fathers within 75 calendar days after determining that location is necessary. 45 CFR § 303.3(a)(b)(3) (App. A-1). The establishment of paternity time-frame requires states to file paternity actions within 90 calendar days after locating the putative fathers. 45 CFR § 303.5(a)(1) (App. A-2).

II. NEW FEDERAL REGULATORY TIMEFRAMES FOR ESTABLISHMENT OF PATERNITY DEMONSTRATE THE NATIONAL IMPORTANCE OF PETITIONERS' CLAIMS AS WELL AS THE SUBSTANTIAL CONFLICTS EXISTING BETWEEN STATE AND FEDERAL AUTHORITIES.

Need for early involvement of putative fathers in the Title IV-A and Title IV-D proceedings was strongly expressed to the states by the Department

of Health and Human Services responses to comments on the proposed regulations:

> "Response: While we have not required separate timeframes for uncontested cases, we strongly urge States to attempt to establish paternity by voluntary acknowledgment immediately upon location of the alleged father." Establishment of Paternity - Section 303.5, para. 1, supra, 54 FR at 32300.

> "Response: * * * This will allow States to serve process on the putative father as soon as possible after the child is born when the putative father is more likely to be responsive because the timeframe for paternity establishment will not begin until the child is old enough for a blood test. * * *" Establishment of Paternity - Section 303.5, para 3, supra 54 FR at 32301. (emphasis added).

The timeframes indicate a strong federal policy -- in harmony with the federal paternity statute of limitations, 42 U.S.C. § 666(a)(5) -- that societal goals will best be served by quick involvement of putative fathers in this cooperative federal-state AFDC program,

rather than by the past pattern of the filing of hundreds of thousands of state-initiated paternity actions, delayed at the states' discretion, until any time before the children reach 18 years of age.

The explicit federal policies for expedited establishment of paternity belie State arguments that the petitioners' constitutional claims for timely Title IV-A notice are insubstantial. These policies also conflict with the State's position that the State, within the context of this federal-state program seeking to create the parent-child bond, has no responsibility to take steps to increase a father's opportunity to bond with his child at a time when he is most responsive to that opportunity, rather than at a later time when the opportunity may no longer exist. (See, Response 11-12).

The federal timeframes strengthen the basis for putative fathers' federal constitutional claim that timely notice to putative fathers in state Title IV-A proceedings will assist children born out-of-wedlock, because putative fathers will be "more likely to be responsive" to their children's needs when putative fathers' constitutional rights to notice are recognized and protected sooner by the State. In so doing, the new federal regulations also provide additional basis for petitioners' claim of a constitutional right to assert meritorious defenses to state-initiated filiation proceedings, where delayed establishment of paternity may not be in the child's best interests. (Petition 16-17).

CONCLUSION

The Petition for Writ for Certiorari should be granted.

Respectfully submitted,

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September 12, 1989

APPENDIX A

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45 CFR 303.3(a)(b)(3), 54 FR 32310 (August 4, 1989):

"(a) Definition. 'Location' means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

"(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

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"(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;"

45 CFR 303.5(a)(1), 54 FR 32310 (August 4, 1989):

"(a) For all cases referred to the IV-D agency or applying for services under §§ 302.33 of this chapter in which paternity has not yet been established:

"(1) The IV-D agency must, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under §§ 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment."